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April 25, 1997

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APR 25 1997.

Federal Communications Commission
Office of Secretary

Mr. William F. Caton
Secretary
Federal Communications Commission
Room 222
1919 M Street, N.W.
Washington, D.C. 20554

**Re: Ameritech Operating Companies' New Expanded Interconnection Tariff,
CC Docket No. 96-185; Puerto Rico Telephone Company's
New Expanded Interconnection Tariff, CC Docket No. 96-160**

Dear Mr. Caton:

Enclosed herewith for filing are the original and six (6) copies of MCI Telecommunications Corporation's Opposition to Direct Cases regarding the above-captioned matter.

Please acknowledge receipt by affixing an appropriate notation on the copy of the MCI Opposition to Direct Cases furnished for such purpose and remit same to the bearer.

Sincerely yours,

Don Sussman
Regulatory Analyst

Enclosure
DHS

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

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APR 25 1997

*Federal Communications Commission
Office of Secretary*

In the Matter of:

**Ameritech Operating Companies'
New Expanded Interconnection
Tariff**

CC Docket No. 96-185

**Puerto Rico Telephone Company's
New Expanded Interconnection
Tariff**

CC Docket No. 96-160

MCI OPPOSITION TO DIRECT CASES

I. Introduction

MCI Telecommunications Corporation ("MCI") respectfully submits its Opposition to the Direct Cases filed by Ameritech Operating Companies ("Ameritech") and by Puerto Rico Telephone Company ("PRTC") on April 10, 1997. Both companies have failed to justify the excessive rates and unreasonable terms and conditions that they propose for expanded interconnection services. In light of these local exchange carriers' ("LECs") failure to meet their burden of proof, and in some cases, to even provide answers to questions asked by the Common Carrier Bureau ("Bureau"), MCI recommends that the Bureau require Ameritech and PRTC to base their expanded interconnection tariffs on the methodology proposed herein. The methodologies proposed by MCI are fully consistent

with the Commission's Virtual Collocation Order.¹

II. Background

In August 1996, the Bureau released orders initiating investigation into the new expanded interconnection tariffs filed by Ameritech and by PRTC. Ameritech's filing reinstated physical collocation service; PRTC introduced expanded interconnection through virtual collocation for the first time. On March 11, 1997, the Bureau issued an order designating issues for investigation, requesting additional information to support proposed rates and terms and conditions.² On April 10, 1997, Ameritech and PRTC filed their Direct Cases, to which MCI is responding in the instant petition.

III. PRTC's Individual Case Pricing Is Unlawful

In its Direct Case, PRTC claims that it "appropriately utilizes individual case basis offerings for selected rate elements."³ In sum, PRTC claims throughout its Direct case that, since it has yet to receive a request for expanded interconnection services, it does not have the experience required to develop generally available tariffed rates for expanded interconnection services. PRTC's justification is deficient.

¹ Expanded Interconnection with Local Telephone Company Facilities, CC Docket No. 91-141, Memorandum and Opinion and Order, 9 FCC Rcd 5154 (1994) ("Virtual Collocation Order").

² In the Matter of the New Expanded Interconnection Tariffs of Ameritech Operating Companies' and Puerto Rico Telephone Company, CC Docket Nos. 96-185 and 96-160, Order Designating Issues for Investigation, DA 97-523 (released March 11, 1997) ("Designation Order").

³ For example, see, PRTC Direct Case at 1.

In the Tariff Suspension Order⁴, the Bureau clearly ruled that it will not permit the LECs to individually negotiate the rates that they charge for expanded interconnection services.⁵ The Bureau restated this policy in its Virtual Collocation Suspension Order, which suspended and investigated the LECs' permanent virtual collocation tariffs.⁶ In that order, the Commission stated that BellSouth, GTE, and SWBT were required to delete any reference to individual case pricing, and replace those provisions with specific rates, because the LECs' use of ICB pricing for expanded interconnection services violated the Virtual Collocation Suspension Order, and were unreasonably vague, in violation of Section 61.54 of the Commission's rules.⁷

PRTC's proposed use of ICB pricing throughout its expanded interconnection tariff should not be permitted for the same reasons the other LECs were not permitted to rely on ICB pricing for expanded interconnection elements. Moreover, such pricing should not be tolerated because it is anticompetitive. ICB pricing of expanded interconnection

⁴ Expanded Interconnection Tariff Suspension Order, CC Docket No. 93-162, 8 FCC Rcd 4589 (Com.Car.Bur. 1993) ("Tariff Suspension Order"), suspending and investigating the physical collocation tariffs. The Commission reaffirmed its position in its Supplemental Designation Order and Order to Show Cause, 9 FCC Rcd 2742 (Com. Car. Bur.) (released May 31, 1994).

⁵ The only exception the Commission allowed was for expanded interconnection equipment, which must later be tariffed. See Expanded Interconnection with Local Telephone Company Facilities, CC Docket No. 91-141, Report and Order and Notice of Proposed Rulemaking, 7 FCC Rcd at 7442-43.

⁶ Ameritech Operating Companies et al., CC Docket No. 94-97, Order, 10 FCC Rcd 1982 ("Virtual Collocation Suspensions Order").

⁷ See 47 C.F.R. §61.54, which requires "clear and unambiguous" tariff provisions.

elements increases the ability of the incumbent LEC to offer discriminatory rates. It would also delay the development of competition because new entrants will not be able to clearly predict their costs.

PRTC's only justification is that it has never offered expanded interconnection services. PRTC should rely on its experience tariffing comparable services as a benchmark. If PRTC's rates then appear to be unreasonable, the Bureau can prescribe rate adjustments, as it has in the past for LEC expanded interconnection rates that it determined to be unreasonably high.

IV. PRTC's Recovery of Common Floor Space Is Unreasonably Discriminatory

In the Designation Order, the Bureau ordered PRTC to justify its proposed rate for floor space. Specifically, the Bureau requested PRTC to justify why it was reasonable for PRTC to develop a floor space rate for expanded interconnection services when it does not develop such a rate for other interstate access DS1 and DS3 services.⁸ PRTC's response is that floor space is intended to recover costs associated with the space occupied by the cage and equipment dedicated solely to the use of the interconnector. PRTC claims in its Direct Case that it is not appropriate to apply a floor space rate to its interstate services because "customers who lease interstate DS1 and DS3 services are not generally served through dedicated terminals and other related equipment."⁹

MCI, on a national basis, is the second largest access customer. Based on MCI's

⁸ Designation Order at ¶61.

⁹ PRTC Direct Case at 9.

experience, PRTC is wrong. In the majority of cases, interstate special access facilities are dedicated to the use of a specific access customer. Thus, PRTC's explanation is deficient. PRTC's recovery of floor space is not justified, and is unreasonably discriminatory.

V. Ameritech's Cost of Capital Is Unlawful

In the Tariff Review Plan Order, the Bureau clearly stated that 11.25 percent is the discount rate that the LECs should use in order to calculate their price outs.¹⁰ In the Designation Order, the Bureau directed Ameritech to justify its cost of capital to the extent that it exceeds 11.25 percent.¹¹ In its Direct Case, Ameritech asserts that it is using 11.5 percent cost of capital because that is its forward-looking cost of money rate used in its TELRIC cost studies.

First, as MCI has pointed out before, there is no reason to believe that any LEC would need to borrow money as a result of expanded interconnection services. Interconnectors are required to pay for any costs that result from the offering of these services.

Second, even if LECs were required to borrow money to provide expanded interconnection services, the added cost of providing these services is minimal, relative to daily operating expenses of the LECs. LECs would also, in any case, be able to borrow from the financial markets, if necessary, at a rate considerably lower than market rate given

¹⁰ Commission Requirements for Cost Support Material To Be Filed with Virtual Collocation Tariffs for Special Access and Switched Transport, Tariff Review Plan Order, 9 FCC Rcd 5683 ("Tariff Review Plan Order").

¹¹ Designation Order at ¶39.

the monopoly control that they continue to maintain over the central office facilities.

Third, Ameritech provides no evidence that its cost of capital is actually 11.5 percent. All of the information provided in its Direct Case to support the calculations are conclusory. Underlying information has not been provided. Finally, it is irrelevant what cost of money Ameritech purportedly used in its TELRIC cost studies. The Bureau directed the LECs to calculate rates for expanded interconnection services base on 11.25 percent cost of capital. Thus, unless a LEC is granted a waiver of the rule, the LECs must use 11.25 percent as its cost of capital.

The artificially inflated cost of money that Ameritech uses to determine its costs is unreasonably high and should be rejected by the Bureau.

VI. Ameritech's Nonrecurring Charges Are Anticompetitive and Unsupported

In the Designation Order, the Bureau directs Ameritech to justify its recovery of recurring charges through nonrecurring charges ("NRCs"). Specifically, the Bureau directs Ameritech to explain and to justify why it is reasonable for it to recover the present value of recurring costs that it may recover over the first seven years of a collocation arrangement in its initial nonrecurring rates for central office build-out and transmission node enclosure.¹² Additionally, Ameritech was directed to explain why the Commission should not direct it to make a pro-rata refund to the initial interconnector for the under-depreciated value of the cage, and permit Ameritech to impose on the subsequent interconnector a nonrecurring charge equal to the under depreciated value of the cage.

¹² Designation Order at ¶13.

In its Direct Case, Ameritech responds that its estimates are conservative in developing its NRCs.¹³ It does not justify that it should be permitted to recover recurring costs through a nonrecurring charge; it simply contends that if Ameritech had not made conservative estimates, the NRCs could have been even higher. Such a response is not supportive of the proposed rates, but reflects its monopoly pricing strategy. Ameritech fails to explain why it should be permitted to impose high (unnecessary) start-up costs on interconnectors through inflated or arbitrary NRCs. Ameritech's justification for not making a pro-rata refund to the initial interconnector for the under depreciated value of the cage is equally deficient. Ameritech's fundamental reason for not making the refund is because the "bookkeeping requirement associated with a refund program would be awkward."¹⁴ This is not a convincing reason. Interconnectors should not be required to pay for services that they do not use. Nor should interconnectors be required to pay for facilities or equipment that others (including the LEC) may use. In the most extreme case, this would amount to the interconnector financing the equipment that others will later use to compete against the interconnector. Pro-rata refunds, while possibly awkward, are thus necessary, and should be ordered by the Bureau.

VII. Conclusion

For the above-mentioned reasons, MCI requests (1) that the Commission uphold its requirement that LECs adjust their overhead loadings to reflect the lowest overhead

¹³ Ameritech Direct Case at 2.

¹⁴ Ameritech Direct Case at 3.

loadings assigned to the LECs' comparable DS1 and DS3 services; and (2) require Ameritech and PRTC to modify their proposed expanded interconnection tariffs as discussed in this petition.

Respectfully submitted,
MCI TELECOMMUNICATIONS CORPORATION

A handwritten signature in black ink, appearing to read 'Don Sussman', followed by a long, horizontal, wavy line that extends to the right.

Don Sussman
Regulatory Analyst
1801 Pennsylvania Ave., NW
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April 25, 1997

STATEMENT OF VERIFICATION

I have read the foregoing and, to the best of my knowledge, information, and belief, there is good ground to support it, and it is not interposed for delay. I verify under penalty of perjury that the foregoing is true and correct. Executed on April 25, 1997.

A handwritten signature in black ink, appearing to be 'Don Sussman', is written over a horizontal line. The signature is stylized with a large, sweeping flourish extending to the right.

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CERTIFICATE OF SERVICE

I, Barbara Nowlin, do hereby certify that copies of the foregoing Opposition to Direct Cases were sent via first class mail, postage paid, to the following on this 25th day of April, 1997.

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